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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,998	05/19/2006	Bernhard Lucas	10191/4566	7625
26646	7590	01/23/2009	EXAMINER	
KENYON & KENYON LLP ONE BROADWAY NEW YORK, NY 10004			BLOUNT, ERIC	
		ART UNIT	PAPER NUMBER	
		2612		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/579,998	LUCAS ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	ERIC M. BLOUNT	2612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 06 October 2008.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 13-30 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 13-30 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.

5) Notice of Informal Patent Application

6) Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of the Claims***

1. Claims 13-30 are pending. There have been no claim amendments.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 13-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ernst, Jr. et al [US 7,124,027 B1].

With regard to **claim 13**, Ernst discloses a method for warning a driver of a motor vehicle, comprising:

- detecting, by an object detector (104), at least one preceding vehicle (106), and a distance and relative velocity with respect to the motor vehicle (column 5, lines 3-20);

- supplying the distance and relative velocity to an evaluation device (column 5, line 65 – column 6, line 21);
- ascertaining, by the evaluation device, whether, assuming that the preceding vehicle performed a deceleration, a collision with the preceding vehicle would be avoidable as a function of a reaction time of the driver and a deceleration of the motor vehicle (column 27, line 15 - column 28, line 63; The assumption that a vehicle decelerates to stopped or a predetermined percentage reads on the claimed assuming the preceding vehicle performed a deceleration.); and
- activating a warning device in an event that the collision would be unavoidable (column 24, lines 10-63 and column 30, lines 24-66; Ernst shows that a warning is issued when a host vehicle approaches a leading vehicle inside a range wherein the vehicles would be capable of completely stopping without colliding.).

Ernst does not specifically disclose that maximum possible deceleration is used to determine if an accident is avoidable. Instead Ernst discloses that the braking profile is user specific and that a braking level that is comfortable for a specific driver would be used to determine whether the warning device should be activated. Obviously, if the maximum possible deceleration were comfortable for a driver then that value would be used along with the other aforementioned factors to determine if an accident is avoidable. However, in driver warning systems it is advantageous for a driver to be warned about a hazardous situation at a time where the driver may avoid danger without drastically changing his/her driving pattern (i.e. slamming on brakes). Using these teachings, it can be seen that a trade-off exists between the warning times and driver braking force. Examiner contends that the amount of braking force used in

determining whether an accident is avoidable is obviously interchangeable and would be left to the skilled artisan.

As for **claims 14-16**, Ernst discloses a plurality of ways to determine driver reaction time (column 31, line 49 – column 32, line 2).

As for **claim 17**, Ernst discloses the warning device can issue an acoustic or visual signal (column 4, lines 54-62).

Regarding **claim 18**, the warning device issues a driver warning using a reversible belt tensioner, the reversible belt tensioner being pretensioned once or several times (column 7, lines 54-65).

As for **claim 19**, the warning device issues a driver warning device by a brief triggering of a deceleration device (column 8, lines 1-10).

As for **claim 20**, the warning device issues a driver warning at least one of: i) by a haptic accelerator pedal, and ii) in the form of a vibration of a steering wheel (column 7, lines 54-65).

As for **claim 21**, the claim is interpreted and rejected using the same reasoning as claim 13 above.

As for **claim 22**, the claim is interpreted and rejected using the same reasoning as claim 17 above.

As for **claim 23**, the claim is interpreted and rejected using the same reasoning as claim 18 above.

As for **claim 24**, the claim is interpreted and rejected using the same reasoning as claim 19 above.

As for **claim 25**, the claim is interpreted and rejected using the same reasoning as claim 14 above.

As for **claim 26**, the claim is interpreted and rejected using the same reasoning as claim 15 above.

As for **claim 27**, the claim is interpreted and rejected using the same reasoning as claim 16 above.

As for **claim 28**, the claim is interpreted and rejected using the same reasoning as claim 18 above.

As for **claim 29**, the claim is interpreted and rejected using the same reasoning as claim 19 above.

As for **claim 30**, the claim is interpreted and rejected using the same reasoning as claim 20 above.

### ***Response to Arguments***

5. Applicant's arguments filed October 6, 2008 have been fully considered but they are not persuasive.

- **Applicants argue:** The Ernst reference does not identically disclose or even suggest the feature of "assuming" that the lead vehicle begins a deceleration.
- **Examiner's response:** In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., assuming that the lead vehicle ***begins*** a deceleration) are not recited

in the rejected claims. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). More specifically, the claim language reads: "ascertaining, by the evaluation device, whether, assuming that the preceding vehicle performed a deceleration, a collision with the preceding vehicle would be avoidable..." This limitation does not require the evaluation device to assume that the leading vehicle begins a deceleration. While it is known (measured) that a leading vehicle is decelerating in the Ernst reference, the reference discloses that it is assumed that the vehicle will continue to decelerate to a stop or by a predetermined percentage (see rejection of claim 13 above). This teaching reasonably meets the limitations of the claims as presented for examination. Using the specification of Ernst it can be seen that the evaluation

- device does indeed assume that a particular deceleration is performed (i.e. a deceleration to a certain speed is performed).
  
- **Applicants argue:** "To assume" has an abundantly plain meaning. It is very clear from the Ernst reference that the actual "performance" of the deceleration is measured or detected and therefore not assumed.
- **Examiner's response:** Examiner agrees with applicant's assertion that "To assume" has an abundantly plain meaning. Ernst clearly discloses in column 28 that the system assumes that a vehicle will perform a deceleration. In this case, the actual "performance" of a deceleration is indeed detected. However, performing a further deceleration to zero

or to a predetermined percentage is assumed. This assumption reads on the claimed “assuming” limitations.

- **Applicants argue:** the Ernst reference teaches away from “a maximum possible deceleration of the motor vehicle.” And that it would not be obvious to a person of ordinary skill in the art to combine the teaching of the Ernst reference with a maximum possible deceleration of the motor vehicle.
- **Examiner’s response:** while Ernst discloses that the system should provide a user with a warning in time for the user to avoid a collision without having to break the vehicle at a braking level that exceeds a braking threshold at which a user is comfortable, the reference does not teach away from applicants’ claimed limitation. First, the use of the word **should** is conditional and does not indicate that the reference must perform in that manner. What the system should do is viewed as an advantageous embodiment that does not limit the operation of the system. Secondly, as discussed in the rejection above, comfort level of a braking operation for a driver is subjective. It is possible for the maximum possible deceleration of the motor vehicle to be comfortable to some drivers. Because Ernst discloses that the comfort level of braking is subjective, it would have been obvious to a person of ordinary skill to try testing the system using a plurality of braking levels, including a maximum braking operation (deceleration), with a plurality of different drivers in order to yield a predictable result of a system which would provide an appropriate safety warning. Thus, the teachings of Ernst reasonably meet the claimed limitations as currently presented for examination.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ERIC M. BLOUNT whose telephone number is (571)272-2973. The examiner can normally be reached on Monday-Thursday 8:00 am - 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bejamin C. Lee can be reached on (571) 272-2963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eric M. Blount/  
Examiner, Art Unit 2612

Eric M. Blount  
Examiner  
Art Unit 2612

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